52 Ill. App. 333; *Fuller* v. *Cushman*, 170 Mass. 286. In this it differs from the bar created by the statute of limitations as that statute when relied upon is conclusive although the debt was not paid. *Devereux's Estate*, 184 Pa. St. 429. An acknowledgment of the indebtedness by the debtor within the time relied upon to raise the presumption of payment will rebut the presumption. *Martin* v. *Bowker*, 19 Vt. 526; *Brewis* v. *Lawson*, 76 Va. 36; *Carll* v. *Hart*, 15 Barb. (N. Y.) 565. This acknowledgment need not be accompanied by a promise to pay. *Breneman's Appeal*, 121 Pa. St. 641; *Colvin* v. *Phillips*, 25 S. C., 228, and it is held that the relationship existing between creditor and debtor is an element to be considered together with other circumstances in rebuttal of the presumption. *Knight* v. *McKinney*, 84 Me. 107; *Updike* v. *Lane*, 78 Va. 132; *Wanmaker* v. *Van Buskirk*, 1 N. J. Eq. 685. The holding in the principal case appears to be a legitimate application of this rule.

JUDGMENT—DEFAULT—APPEARANCE.—A judgment having been rendered against defendant by default, it filed an appearance for the sole purpose of moving the court to set aside the judgment as irregular, and to find certain facts or pass on the same. *Held*, that, as the motion affected the merits of the case, the appearance was general and constituted a submission of defendant to the jurisdiction of the court. *Scott* v. *Mutual Reserve Fund Life Assn.* (1905), — N. C. —, 50 S. E. Rep. 221.

The test for determining the character of an appearance is the relief asked. In deciding whether or not an appearance is general or special the court looks to the purpose for which it was made. *Crawford* v. *Foster*, 84 Fed. 939; *Reedy* v. *Howard*, 11 S. D. 160; *Houlton* v. *Gallow*, 55 Minn. 443, 57 N. W. 141; *Allen* v. *Lee*, 6 Wis. 469; *Law* v. *Nelson*, 14 Colo. 409, 24 Pac. 2. An appearance to deny the jurisdiction of the court over the subject matter is by weight of authority a general appearance. *Fitzgerald* v. *Fitzgerald*, 137 U. S. 98; *Elliott* v. *Lawhead*, 43 Ohio St. 172. But there are cases which hold that a defendant may appear specially to object to the jurisdiction of the court either over his person or the subject matter. *Porter* v. *Chicago, etc., R. R.*, 1 Nebr. 14; *Cropsey* v. *Wiggenhorn*, 3 Nebr. 116. In some states a special appearance is inhibited. *York* v. *Texas*, 137 U. S. 15.

LIBEL—PUBLISHING OF A WHITE MAN THAT HE IS "COLORED."—Defendant publishers in a news item concerning plaintiff, who is a white man, referred to him as "colored." *Held*, libelous per se. *Flood* v. *News & Courier Co.* (1905), — S. C. —, 50 S. E. Rep. 637.

Defendant demurred to the complaint below on the ground that under the provisions of the thirteenth, fourteenth and fifteenth amendments to the Constitution of the United States, such a use of the word "colored" is not libelous or defamatory, and the demurrer was sustained in the lower court. This point was settled in South Carolina by very early cases and does not seem to have arisen there since the year 1818. The view of the court is that the amendments cited could not have been intended to refer to social conditions and hence in view of the radical distinction between the races in the south, the publication complained of must necessarily result injuriously. The Louisiana holding is the same. *Spotorno* v. *Fourichon*, 40 La. Ann.

423, 4 Southern 71; *Upton* v. *Times-Democrat Pub. Co.*, 104 La. Ann. 141, 28 Southern 970. In North Carolina and Ohio it has been held that similar charges made orally are not actionable. *McDowell* v. *Bowles*, 53 N. C. 184; *Barrett* v. *Jarvis*, 1 Ohio, 84. The point appears not to have arisen elsewhere.

MASTER AND SERVANT—CONCURRENT NEGLIGENCE OF MASTER AND FELLOW SERVANT.—Plaintiff was a locomotive fireman on a lumber train owned and operated by defendant. Through the negligence of the engineer logs were loaded in such a manner as to make it impossible to use the brakes. In going down grade the speed of the train became very great and could not be checked. The rails spread, owing to the fact that the ties were decayed, the train was derailed and plaintiff sustained severe injuries. He sues the company for damages. *Held*, that he was entitled to recover. *Fuller* v. *Tremont Lumber Co. et al.* (1905), — La. —, 38 So. Rep. 164.

The defense was that the injury was caused by the negligence of the engineer in improperly loading the cars. If this were the sole cause of the accident, then under the fellow servant rule there could be no recovery against the master. But the injury complained of was caused by the concurrent negligence of the master and the fellow servant, for the master was bound to furnish a reasonably safe track and equipment. Under such circumstances the mere fact that the negligence of the fellow servant contributed to the injury does not relieve the master from liability. *C. & A. R. R. Co.* v. *Bell*, 111 Ill. App. 280; *Cole* v. *St. Louis Transit Co.*, 183 Mo. 81, 81 S. W. Rep. 1138; *Colley* v. *Southern Cotton Oil Co.*, 120 Ga. 258, 47 S. E. Rep. 932; *Thomas* v. *Smith*, 90 Minn. 379, 97 N. W. Rep. 141; *Grant* v. *Keystone Lumber Co.*, 119 Wis. 229, 96 N. W. Rep. 535; *Cudahy Packing Co.* v. *Anthes*, 117 Fed. Rep. 118, 54 C. C. A. 504; *Simone* v. *Kirk*, 173 N. Y. 7, 65 N. E. Rep. 739. This is the rule even though due care on the part of the fellow servant would have prevented the injury. *Cone* v. *D. L. & W. R. R. Co.*, 81 N. Y. 206, 37 Am. Rep. 491. A few of the authorities hold that the master is liable only if his negligence is the proximate cause of the injury. *Phil. Iron Co.* v. *Davis*, 111 Pa. St. 597, 56 Am. Rep. 305; *Luts* v. *A. & P. R. R. Co.*, 6 N. Mex. 496; *Trewatha* v. *Buchanan Gold Mining Co.*, 96 Cal. 494; *Little Rock R. R. Co.* v. *Barry*, 84 Fed. Rep. 944. The great weight of authority, however, is to the effect that in cases of concurrent negligence the master is liable.

MASTER AND SERVANT—TORT OF SERVANT—SCOPE OF EMPLOYMENT.—W, an employe of defendant railroad corporation, whose duty it was to manage a steam pump on defendant's right-of-way, was given a tricycle to gather fuel from any portion of the said right-of-way. On this occasion, while on his way to a certain point for fuel he was accosted by a sick friend who desired W to carry him to Waverly, a station three miles beyond his intended destination. On returning, but before reaching the point at which he had originally taken up his sick friend, he negligently ran into plaintiff and severely injured him, for which injuries the plaintiff brought this action against the master for damages. *Held*, that the employe had resumed the duties of his employment, and the responsibility of the master for his acts attached immediately on his having accomplished the errand on behalf of his friend, and started to return to his duty of gathering fuel, and the defendant was there-